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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,524	04/12/2004	Ira Ekhaus	16128-002	4871

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30 Rockefeller Plaza  
New York, NY 10112

EXAMINER
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HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/823,524	Applicant(s) EKHAUS, IRA	
	Examiner Victor K. Hwang	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13 and 15-22 is/are rejected.
- 7) ☒ Claim(s) 1, 6 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed September 16, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the one or more attachment members configured deformable between a first position and a second position with a resilient mechanical compliance (claims 1, 9 and 17); the one or more attachment members are each configured with an asymmetric cross-section (claim 18), the asymmetric cross-section configured with a greater breadth in a direction perpendicular to the weight plate axis then (sic) in a direction parallel to the weight plate axis (claim 19); the one or more attachment members are configured with an internal pivot point (claim 20); and the one or more attachment members are configured with an asymmetric mechanical compliance (claim 21).

Applicant is required to cancel the new matter in the reply to this Office Action.

### *Response to Arguments*

2. Applicant's arguments with respect to claims 1-5, 7-13, 15 and 16 have been considered but are moot in view of the new ground(s) of rejection. In response to Applicant's arguments that *Wood* does not teach or disclose an attachment member that is configured to be deformable between first and second positions with a resilient mechanical compliance, the Examiner disagrees. The attachment members 10 or 9a of *Wood* are made of a suitable length of leather strap or of a wire bail. Both materials have an inherent resilient mechanical compliance and can

be deformable between first and second positions. The Examiner agrees that *Lay* does not disclose attachment members deformable between first and second positions with a resilient mechanical compliance. The attachment members of *Lay* are rigid, but the attachment members of *Wood* do have an inherent resilient mechanical compliance. Wire bail is a material commonly used for securing a handle to an article. It may not have the same resilient mechanical compliance as the spring material of the invention, but Applicant has not disclosed any particular values of resilient mechanical compliance.

In response to Applicant's argument with regard to *Takahashi*, *Takahashi* is cited to show the desirability of adjustability to accommodate various foot sizes to be secured to a weighted device between a support bar and a grip section. Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). That the means for providing adjustability disclosed by *Takahashi* may not be physically incorporated into the primary reference of *Wood* does not render the combination of references improper. In re Nievelt, 482 F.2d 965, 179 USPQ 224 (CCPA 1973); In re Bozak, 416 F.2d 1385, 1390, 163 USPQ 545, 549-50 (CCPA 1969). The issue is whether the prior art, taken as a whole, would have rendered the claimed subject matter obvious. In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

### ***Drawings***

3. The drawings were received on September 16, 2005. These drawings are acceptable, but drawing objections remain as noted below.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: “12” as shown in Fig. 1A. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “30” referred to on line 18 on page 9 of the substitute specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

6. The substitute specification filed September 16, 2005 has been entered.
7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification as originally filed does not provide proper antecedent basis for “resilient mechanical compliance” (claims 1, 9 and 17); “asymmetric cross-section” (claims 18 and 19); “internal pivot point” (claim 20); and “asymmetric mechanical compliance” (claim 21).
8. The disclosure is objected to because of the following informalities:  
on page 7 of the substitute specification, line 14, “8” presumably should be changed to --1A--.  
Appropriate correction is required.

***Claim Objections***

9. Claim 1 is objected to because of the following informalities: on line 4, --to be-- presumably should be inserted after “configured”. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 2, 4, 7, 8, 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by *Wood* (US Pat. 1,917,566). *Wood* discloses an adjustable kettlebell comprising a handle 5 or 10a with a grip section 5 or 10a; one or more attachment members 10 or 9a, wherein the one or more attachment members are configured to be deformable between a first position and second position with a resilient mechanical compliance; a support bar 1, aligned with a weight plate axis, substantially parallel to the handle grip section axis; at least one weight stack 3,4; and an adjustable plurality of weight plates 3,4. The support bar has a smooth overall profile lacking in excessive protrusions. Roughly hemispherical end caps 2 can approximate a spheroidal shape of a solid kettlebell. The cup members 2 also form a protective band surrounding the weight stack.

The one or more attachment members are disclosed as a suitable length of leather 10 or as a wire bail 9a. Leather inherently has a resilient mechanical compliance so that it can be deformable between a first position and a second position. The leather strap also has an asymmetric cross-section with a greater breadth in a direction perpendicular to the weight plate axis than in a direction parallel to the weight plate axis, and therefore, also inherently has an asymmetric mechanical compliance. A wire bail also inherently has a resilient mechanical compliance so that it can be deformable between a first position and a second position. The attachment members can be resiliently deflected to clamp tightly against a variety of weight stack widths. A bight portion of the wire bail attachment member 9a has a wooden grip section

10a disposed thereabout. The handle 5 or 10a can be used to secure a user's foot (pg. 1, lines 85-90).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wood* (US Pat. 1,917,566) in view of *Mason* (US Pat. 2,398,436). *Wood* has been discussed above, and such discussion is incorporated herein. *Wood* discloses that the handle 10a is made of wood and is disposed about a bight portion of the wire bail attachment members 9a. *Wood* does not disclose that a segment of the attachment members can flex within the grip section (claim 3); and that the one or more attachment members are configured with an internal pivot point (claim 20).

*Mason* discloses a handle for the bight section of a wire bail 9. Three embodiments of the handle are shown and each is formed of two identical half handle sections that are removably mounted to the bail. The embodiments shown in Figs. 3 and 4 are hollow embodiments wherein the bight portion may flex within the grip section 110,210 with the bight portion of the bail pivotal about grooves 112,212.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bight portion of the attachment members of *Wood* with the



hollow hand grip sections of *Mason*, since the hand grip sections of *Mason* are for providing a gripping surface on a wire bail, such as the wire bail of *Wood*.

14. Claims 9, 10, 12, 15-17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wood* (US Pat. 1,917,566) in view of *Takahashi* (JP 05137815 A). *Wood* has been discussed above, and such discussion is incorporated herein. *Wood* does not disclose the attachment members configured to provide an adjustable distance between the grip section and the weight plate axis (claims 9, 17 and 22).

Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

*Takahashi* discloses a weighted device comprising a grip section 5 for securing the weighted device to a user's foot. The grip portion is adjustable relative to a support bar 3 by adjusting the buckle 10 and changing the size of attachment members 6,7. *Takahashi* shows the desirability of adjustability to accommodate various foot sizes securely to the weighted device between the support bar 3 and the grip section 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the attachment members of *Wood* to provide an adjustable distance between the grip section and the weight plate axis, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art, and *Takahashi* shows the desirability of adjustability.

15. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Wood* (US Pat. 1,917,566) in view of *Takahashi* (JP 05137815 A) as applied to claims 9, 10, 12, 15-17 and 22 above, and further in view of *Mason* (US Pat. 2,398,436). *Wood* in view of *Takahashi* discloses the invention as claimed except for wherein a segment of the attachment members can flex within the grip section.

*Mason* discloses a handle for the bight section of a wire bail 9. Three embodiments of the handle are shown and each is formed of two identical half handle sections that are removably mounted to the bail. The embodiments shown in Figs. 3 and 4 are hollow embodiments wherein the bight portion may flex within the grip section 110,210 with the bight portion of the bail pivotal about grooves 112,212.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bight portion of the attachment members of *Wood* in view of *Takahashi* with the hollow hand grip sections of *Mason*, since the hand grip sections of *Mason* are for providing a gripping surface on a wire bail, such as the wire bail of *Wood*.

16. Claims 1, 3-5, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dudas* (DE 297 11 570 U1) in view of *Schwartz* (US Pat. 4,627,618). *Dudas* discloses a weight device comprising a support bar 1 aligned along a weight plate axis; at least one weight stack 10,11,12; and an adjustable plurality of weight plates 10,11,12. The support bar has a smooth overall profile lacking in excessive protrusions and comprises a bolt 4/washer 6 combination tightened on either side of an elongated nut 2.

*Dudas* does not disclose a handle with a grip section substantially parallel to the support bar (claim 1); one or more attachment members configured to be deformable between a first position and a second position with a resilient mechanical compliance (claim 1); the attachment members resiliently deflect to clamp against a variety of weight stack widths (claim 2); a segment of the attachment members can flex within the grip section (claim 3); the one or more attachment members are each configured with an asymmetric cross-section (claim 18); the asymmetric cross-section is configured with a greater breadth in a direction perpendicular to the weight plate axis than in a direction parallel to the weight plate axis (claim 19); and the one or more attachment members are configured with an asymmetric mechanical compliance (claim 21).

*Schwartz '618* discloses a weight device comprising a handle with a grip section 30 substantially parallel to a support bar 21 that supports removable distal weights 24,25. The grip section assists in securing a user's hand to the weight device during exercise in order to: (a) provide the capability to support exercise of long duration; (b) prevent undue spasm of the arm and hand musculature; (c) provide the capability of releasing hand muscles from the necessity and burden of gripping a dumbbell shaft continuously; (d) support the continuation of very rapid arm movements of extreme amplitude; and other benefits (col. 1, line 56 to col. 2, line 13). One or more attachment members 34 are removably attached to the support bar proximal of the removable weights 24,25 and space the grip portion from the support bar. The attachment members 34 are shown to have an asymmetric cross-section with a greater breadth in a direction perpendicular to the weight plate axis than in a direction parallel to the weight plate axis and an

asymmetric resilient mechanical compliance (col. 3, lines 9-15). A segment of the attachment members can flex within the grip section, since the grip section comprises a hollow bore.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the weight device of *Dudas* with the grip section and attachment members of *Schwartz '618*, in order to secure the weight device to a user's hand during exercise (col. 1, line 56 to col. 2, line 13).

17. Claims 9, 11-13, 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dudas* (DE 297 11 570 U1) in view of *Schwartz* (US Pat. 4,627,618) as applied to claims 1, 3-5, 18, 19 and 21 above, and further in view of *Schwartz* (US Pat. 4,351,526). *Dudas* in view of *Schwartz '618* discloses the invention as claimed except for the attachment members configured to provide an adjustable distance between the grip section and the weight plate axis (claims 9, 17 and 22).

*Schwartz '526* discloses a grip section 33 with attachment members 30 configured to provide an adjustable distance between the grip section and the weight plate axis. A plurality of spaced apertures 32 are selectively secured to the ends of the support bar 21 to provide the adjustability. Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the attachment members of *Dudas* in view of *Schwartz '618* to provide an adjustable distance between the grip section and the weight plate axis, since it has

been held that the provision of adjustability, where needed, involves only routine skill in the art, and *Schwartz '526* shows the desirability of adjustability.

***Allowable Subject Matter***

18. Claims 6 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Pelletier et al.* (US Pat. 850,964), *Postl* (US Pat. 1,991,520), *Inoue* (US Pat. 4,021,040), *Crow et al.* (US Pat. 4,192,500) and *Yang* (US Pat. 4,681,315) discloses exercise devices comprising structure that read upon limitations of the claimed invention.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

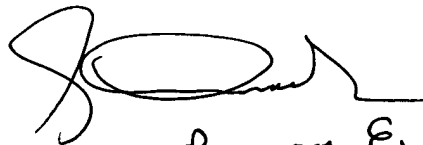
The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
October 13, 2005

  
PRIMARY EXAMINER